Supreme Court, U.S.
JAN 26 2001
OFFICE OF THE CLERK

(4)

No. 00-1046

In the Supreme Court of the United States

STEVEN HENRY ARTHUR ADAMS, for Himself and as Representative of Certain Underwriters at Lloyd's; INDEMNITY MARINE ASSURANCE COMPANY LTD; THE YORKSHIRE INSURANCE COMPANY LIMITED; COMMERCIAL UNION ASSURANCE COMPANY PLC; PHOENIX ASSURANCE PLC; CORNHILL INSURANCE PLC; NORWICH UNION FIRE INSURANCE SOCIETY LTD; NORTHERN ASSURANCE CO., LTD; SKANDIA UK INSURANCE PLC; OCEAN MARINE INSURANCE COMPANY, LTD.; FOLK SAM INTERNATIONAL INSURANCE COMPANY (U.K.) LTD; SCOTTISH LION INSURANCE COMPANY LTD; WURTTEMBERGISCHE FEUERVERSICHERUNG AG; SPHERE DRAKE INSURANCE PLC; DAI-TOKYO INSURANCE COMPANY (U.K.) LTD.

Petitioners

VERSUS

AMERICAN EAGLE MARINE, INC., and A.K. STEEL CORPORATION, formerly known as Armco Steel Company, L.P.

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

PAUL C. MINICLIER
LAW OFFICE OF PAUL C. MINICLIER
336 Camp Street, Suite 450
New Orleans, Louisiana 70130
Telephone: (504) 568-1276
Attorneys for Respondent,
A.K. Steel Corporation

27 pp 1/05

INDEX

Appendix A -
Sales Contract and Change Order
Between A.K. Steel and American Eagle
for the Purchase of the Salvaged Steel
(dated 3/8/95) ..... A-1 through A-9

Appendix B -
Letter from Frank Courtenay, Counsel
for Petitioners, to Petitioners
(dated 4/27/95) ..... B-1 through B-4

Appendix C -
American Eagle's Answer to
Supplemental and Amended Complaint
of Petitioners ..... C-1 through C-4

Appendix D -
A.K. Steel's Answer and
Defenses, Amended Complaint for
Declaratory Judgment and Amended
Cross-Claim ..... D-1 through D-8

CHANGE

DATE 03/08/95

CHANGE NOTICE 28106501326

Reference the above Number on all Documents and Correspondence

AK Steel

FED. I.D. NO. 31-1267629

0661

AK Steel Corpo

AE,77

EXHIBIT NO. 12

D. CURE CSR

AMERICAN EAGLE
2025 DESTREHAM AVENUE
HARVEY LA 70058

39281

SHIP TO:

AK Steel Corporation

INVOICE TO:

PH:800-324-3538
FX:504-340-9629

PROMISED: → 01/12/95

ROUTING

FOB ORIGIN POINT FREIGHT EQUALIZATION POINT RATE UNIT

TERMS FINAL CHARGE CONFIRM DATE QUOTE NO. QUOTE DATE FIRM DATE

287-2971-6893-0000

ITEM QTY. UM DESCRIPTION PRICE

ADJUST THE ORIGINAL PURCHASE ORDER AND ALL PREVIOUS CHANGE NOTICES WITH THE FOLLOWING CHANGES, DATA NOT ALTERED OR SPECIFICALLY MENTIONED REMAINS UNCHANGED.

TYPE OF CHANGE: DESC

1 3750 NTN ILVA SUNKEN SLABS ABANDONED AT CAIRO MI 176.0000
PRICING INCLUDES FREIGHT AND BARGE RENTAL, RIGHTS
AND POSESSION IN SALVAAGE AND TITLE RIGHTS, IF
ANY AMERICAN EAGLE MAY HAVE CHANGES MID STREAM
AT PORT OF VICKSBURG, MI
ESTIMATED QUANTITY IS 3750 NET TONS
AK STEEL WILL INSPECT AND APPROVE THE SLABS
FOLLOWING SLAVAGE AND PRIOR TO SHIPMENT
AMERICAN EAGLE WILL WARRANT AND
DOCUMENT THAT THE SLABS HAVE BEEN ABANDONED FOR
SALVAGE BY THE OWNERS/UNDERWRITERS
PAYMENT FOR THE SLABS WILL BE WIRE TRANSFERRED TO
AMERICAN EAGLE UPON AK STEEL'S APPROVAL OF THE
SLABS AND PRIOR TO SHIPMENT OF SLABS FROM PORT OF
VICKSBURG, MI AND UPON PRESENTATION OF AN ON
BOARD ORIGINAL BILL OF LADING TO BUYER
TONNAGE IS DETERMINED BY MEASUREMENT AND
CALCULATION OF WEIGHT, SUBJECT TO VERIFICATION OF
ACTUAL WEIGHT AT AK STEEL'S MILL
AMERICAN EAGLE AGREES TO SELL AK STEEL ALL
SALVAGABLE SLABS AND WILL ENDEAVOR TO RAISE ALL
SLABS POSSIBLE FOR SALE
EXCLUSIVELY TO AK STEEL. SLABS WILL BE WHOLE AND

Mail Shipping Documents and Invoices in Duplicate to the Invoice Address Above.
INVOICES NOT SHOWING PURCHASE ORDER NUMBER WILL BE RETURNED.
TERMS/CONDITIONS: Subject to and Valid Only With the Inclusion of All Terms and Conditions on Reverse. No Terms and Conditions of Seller Will Bind Buyer Without Buyer's Written Consent.

AK Steel Corporation
Purchasing & Transportation Department
V. L. RILEY
VLRiley
PH:513-425-2945 FX:513-425-5434

CAROL SUHICH S1630

28106501326

MAR 08 '95 02:00PM AK STEEL CORPORATION P.2

A-1

BEST AVAILABLE COPY

DISCRETION.
BUYER SHALL UPON ACCEPTANCE OF THIS PURCHASE ORDER BY SELLER, REMIT TO SELLER NIA WIRE TRANSFER THE SUM OF $25,000. iT IS UNDERSTOOD BY THE PARTIES THAT THIS SUM REPRESENTS A DOWNPAYMENT, AND BUYER BUYER'S RIGHT TO RECEIVE EXCLUSIVELY ALL SLABS SALVAGED BY SELLER.
IT IS FUTHER AGREED THAT SHOULD SELLER FAIL TO SALVAGE AT LEAST SEVEN SLABS OR SHOULD THE SLABS SALVAGED BY SELLER BE UNACCEPTABLE TO BUYER. THEN SELLER SHALL RETURN THE DOWN-PAYMENT IN FULL TO BUYER. SHOULD BUYER REJECT THE SLABS SALVAGED BY SELLER, SELLER MAY FOLLOWING RETURN OF DOWN-PAYMENT TO BUYER, DISPOSE OF ALL REMAINING SLABS AT HIS DISCRETION.
PAYMENTS WILL BE IN THE FORM OF A WIRE TRANSFER AND BASED UPON THE MUTUAL AGREEMENT OF THE SELLER AND BUYER AND BUYERS ACCEPTANCE OF SALVAGED SLABS.
UPON MUTUAL AGREEMENT OF SLAB QUALTIY AND SALVAGE WILL PROCEED WIHTOUT FURTHER DELAY.
PRICING INCLUDES BARGE RENTAL AND FREIGHT TO CINCINNATI OHIO. BUYER HAS THREE LAY DAYS IN CINCINNATI TO OFFLOAD SLABS EXCLUDING HOLIDAYS AND WEEKENDS, IF BUYER FAILS TO OFFLOAD SLABS WITHIN THREE WORKING DAYS, THEN BUYER WILL PAY BARGE DEMURRAGE OF $150/DAY.
NOUN QUALIFIER: SLAB,STEEL
Req. by: 02/01/95 At DOOR#: 021

COMMENTS:

1. American Eagle Marine shall supply the attached documents on ownership and abandonment of the slabs. American Eagle sells all its rights, interest, and possession of such slabs retrieved to AK Steel for the above captioned price.

2. Payment weight shall be calculated by physical measurement of each slab and multiplying if by a weight factor of .283 lbs per cubic inch. Steel shall be paid for by the short ton of 2,000 lbs.

3. American Eagle shall supply the necessary barges to offload slabs from wreck. Barges shall be paid for by American Eagle until such time as they leave the wreck sight. At that time AK Steel shall reimburse American Eagle for barge rental until the barge is returned to its destination. American Eagle shall not mark up barge rental. AK Steel is responsible for all towing and transportation cost for the retrieved slabs.

Omitted per negotiations DSL

ACCEPTED March 8, 1995
Doug Williams - President

MAR 03 '95 02:01PM AK STEEL CORPORATION

A-2

AK Steel Corporation
TERMS AND CONDITIONS

1. **DEFINITIONS:** The term "Purchaser" as hereinafter used means AK Steel Corporation and the term "Seller" means the person, firm or corporation from whom the merchandise described on the reverse side hereof has been ordered.

2. **QUANTITIES:** The quantity of merchandise delivered by Seller to Purchaser shall not be greater than the amount specified on the reverse side hereof unless an additional amount is first ordered by Purchaser in writing on its "Change Order Form."

3. **PACKAGING:** Seller shall properly package all merchandise for safe shipment to the Purchaser and a notice of shipment shall be sent by Seller to Purchaser at the time the merchandise described on the reverse side hereof is shipped which shall state the number of the order, the kind of merchandise, the Seller's name and the route by which the shipment is being made.

4. **TRANSPORTATION COSTS:** Seller warrants that any transportation costs included in the price will not exceed actual transportation costs paid by Seller. If this order calls for payment of any transportation costs by Purchaser, Purchaser shall in no event be liable or accountable for any amount in excess of the actual costs of transportation. Seller shall be accountable for any excess transportation costs arising from Seller's failure to make delivery to the f.o.b. point or to follow shipping instructions specified on the face of this order.

5. **CANCELLATION:** If the merchandise covered by this order is standard stock merchandise, Purchaser, at its option, may cancel at any time any unshipped portion of this order without further obligation hereunder, except to make payment, subject to other applicable terms hereof for the merchandise actually shipped prior to such cancellation. If this order covers merchandise manufactured or fabricated to Purchaser's specifications or specifications especially prepared by Seller for Purchaser, then at any time prior to delivery of all merchandise covered hereby, Purchaser, at its option, may cancel this order, in whole or in part, by written or telegraphic notice to Seller, and in such event the following provisions shall govern and control:

(a) Upon effective date of such cancellation, Seller shall stop all work in connection with this order, except as otherwise directed by Purchaser.

(b) Purchaser shall pay Seller's actual and direct out-of-pocket costs to the date of such cancellation, including Seller's expense in connection with cancellation of any subcontracts, all as approved by Purchaser, plus 6% of such costs, provided, however, that in no event shall the total amount to be paid upon such cancellation, plus payments previously made, exceed the lesser of (i) the total aggregate purchase price equivalent to the percentage of the work performed up to cancellation; or (ii) that proportion of the aggregate total purchase price equivalent to the percentage of the work performed up to cancellation.

(c) On such payment the materials or uncompleted portions of the work shall be the property of Purchaser and shall be subject to its disposition. The remedies provided herein are seller's exclusive remedies should this contract be cancelled.

None of the above provisions of this Article 5 relating to payment upon cancellation shall apply in the event that at the time notice of cancellation is given, Seller is in default in delivery or otherwise or has breached any terms or conditions of this order. In the event of any such default or breach, Purchaser shall have the right to terminate this order in whole or in part, and Purchaser may procure elsewhere merchandise similar to the merchandise as to which the order is so terminated, and Seller shall be liable for any costs for such similar merchandise in excess of the price or prices specified herein, provided, however, that Seller shall continue the performance of this order to the extent not terminated by Purchaser. In addition to the rights provided above, Purchaser may exercise any other rights or remedies provided by law or under this order for any such default or breach by Seller.

6. **INSPECTION:** At any time during the performance of this contract Purchaser shall have the absolute right to inspect the equipment wheresoever located. If upon inspection or testing such merchandise is found to be unsatisfactory, defective, of inferior quality or workmanship or fails to meet any guarantees or operating or other specifications contained herein or any other requirements of this Purchase Order, then without prejudice to any other rights or remedies, Purchaser may return the merchandise or any part thereof to Seller, and all amounts therefore paid by Purchaser to Seller on account of the purchase price of such returned merchandise, together with any costs incurred by Purchaser in connection with the original delivery or return of such merchandise, shall be repaid to Purchaser by Seller. Neither the inspection nor acceptance of merchandise shall release the Seller from any of the warranties or other provisions of this Order. Purchaser reserves the right, even after it has paid for and accepted said merchandise, to make a claim against Seller on account of any merchandise hereby ordered which does not prove to be satisfactory or is defective.

7. **WARRANTY:** The Seller warrants all equipment, materials and supplies (hereinafter call "equipment") furnished under this Purchase Order against defects in material and workmanship; and, where design is the responsibility of the Seller, against failures to perform in accordance with the requirements of this Purchase Order and applicable specifications. The warranty period shall apply, at least, throughout the first twelve months of operation of said equipment by Purchaser provided, however, that should Seller perform warranty re-work on the equipment or any part thereof the warranty period shall be extended for an additional twelve month period.

Should any part of said equipment fail to function or meet the required performance as specified above, or should defects in material or workmanship appear within the period specified above, Seller shall immediately upon receipt of notification from Purchaser, make changes, corrections and/or additions - or authorize Purchaser to make such changes, corrections or additions as Purchaser deems necessary to fulfill the performance requirements of the specifications and/or correct all such defects. These changes/additions, including the removing and replacing of all parts required for the correction, shall be made at Seller's sole expense and without charge to Purchaser.

8. **PATENT INFRINGEMENT:** The Seller will protect, defend and indemnify Purchaser for all costs, expenses or damages arising from the infringement or alleged infringement of letters patent by the material or by equipment furnished pursuant to this order, or by the necessary or contemplated use of the material or operation of the equipment so furnished.

9. **LOSS DAMAGE:** Seller shall assume and pay any and all loss or damage to said merchandise from any cause whatsoever until delivered to Purchaser at the f.o.b. point specified on the reverse side hereof. Upon delivery of such merchandise to a common carrier at such f.o.b. point properly consigned to Purchaser, any loss or damage to such merchandise thereafter occurring shall be borne by Purchaser.

10. **LAWS AND REGULATIONS:** Seller warrants that all merchandise delivered pursuant to this order shall have produced, sold and delivered to Purchaser in compliance with all applicable laws and regulations and that the prices therefor are not in excess of any applicable prices established by law or governmental regulation. Seller promises to give a written, signed certification in the following words, or words substantially equivalent thereto, which will appear on the invoice or some other document arriving with the merchandise:

> "We hereby certify that the goods covered by this invoice were produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended, including Sections 6, 7 and 12 thereof, and of the regulations and orders of the United States Department of Labor issued under Section 14 thereof."

11. **MISCELLANEOUS:** Time is of the essence hereof. In accepting this order or making any deliveries hereunder, Seller agrees to all of the terms and conditions stated on this Purchase Order form and agrees to perform this order and make deliveries hereunder as required hereby. This Purchase Order, together with any written documents which may be attached hereto and/or incorporated by specific reference, constitutes the entire agreement between the parties and supersedes all previous communications between them, either oral or written. All such previous communications are hereby abrogated and withdrawn, and no stipulations, representations or agreements by Purchaser or any of its officers, agents or employees shall be binding on the Purchaser unless reduced to writing and attached to or incorporated in this Purchase Order by reference as above provided and no local, general or trade custom shall alter or vary the terms hereof.

12. **GOVERNING LAW:** This Purchase Order is to be construed and determined in accordance with the laws of the State of Ohio.

A-3

MAR 01 '95 02:32PM AK STEEL CORPORATION

SALVAGE CONTRACT

This agreement is entered into on this 24 day of January, 1994, between Italian Claims Agency, Inc., Agent for Duferco S.A. of Lugano, Switzerland, located at 530 Burnside Avenue, Inwood, New York 11696, hereinafter referred to as "OWNER"/Agent and American Eagle Marine, Inc., located at 2025 Destrehan Avenue, Harvey, LA 70058, hereinafter referred to as "SALVOR."

WITNESSETH

For and in consideration of the sums identified below and the mutual covenants and agreements herein contained, the parties hereto agree and undertake as follows:

1. OWNER warrants that it is the OWNER or the Agent of OWNER with full authority to act on behalf of OWNER, of the contents of two presently submerged barges located near the bridge crossing the Mississippi River at Vicksburg, MS. The contents of the two barges, hereinafter referred to as "CARGO" collectively consist of 158 steel slabs ranging in size 25'-33.66' in length x 49.6"-55.51" in width x 9.57" thick, and each weighing approximately 23 tons.

2. Within forty-eight (48) hours from the date this contract is executed by all parties and delivered to SALVOR, SALVOR shall commence salvage operations, weather permitting, and use its best efforts to remove the subject CARGO from the barges in question. Weather permitting for this purpose means the river stage is 20' or below on the Vicksburg gauge (maintaining). Salvage operations will continue once started on a daily basis with the only reason for work stoppage being weather or river conditions. The steel slabs in question are to be loaded and stowed by the SALVOR into barges to be provided at the salvage site by the OWNER.

3. SALVOR'S only obligation under this contract shall be to use its best efforts to remove said CARGO from said location and to deliver the same duly stowed on the hopper barges which shall be provided by the OWNER. SALVOR shall conduct all salvage operations in a workmanlike fashion with due care and skill.

4. SALVOR shall at all times be an independent contractor with full operational control of the salvage; OWNER is interested only in the successful removal of the CARGO. SALVOR shall furnish all necessary supervision, labor, vessels, equipment, machinery, tools, materials, service and supplies as deemed necessary for the performance of the cargo removal in a diligent and workmanlike manner, SALVOR may subcontract the performance of all or a portion of the said services to such contractors, suppliers and material men (including affiliated,

* NOTE * PARAGRAPH 1 WARRANTY OF OWNERSHIP

A4

subsidiary and related companies of SALVOR) as SALVOR shall deem necessary and/or appropriate to accomplish such service, provided that the entering into of any subcontract shall in no way diminish SALVOR'S obligations hereunder. SALVOR further covenants, warrants and represents the work performed hereunder by it and/or its subcontractor shall be performed by SALVOR and any subcontractor in a workmanlike manner with due regard to generally acceptable standards in the marine salvage industry.

5. This contract is a "Salvage Removal" contract for cargo retrieval. SALVOR shall not be liable for any damage caused to said CARGO and shall be free to perform the salvage and delivery thereof in any manner that it deems most expeditious, subject to principles of good salvage operations. In this instance, good salvage operations shall not include drilling, cutting, or torching being done to the CARGO in question without the express written permission from the OWNER in advance of any of these actions. SALVOR will use due care in raising the CARGO.

At his option, SALVOR will not release the salvaged CARGO to OWNER until full payment is received for all services rendered.

6. OWNER specifically reserves the right to cancel this salvage contract with the SALVOR any time by providing the SALVOR with written notice.

7. Prior to the commencement of salvage operations, SALVOR will provide insurance coverage for contractor's liability in the amount of one million dollars ($1,000,00.00) on which it will name OWNER as an additional insured.

8. It is understood and agreed that the CARGO will be at the risk of her OWNER throughout the course of the salvage and recovery operation and delivery, and that SALVOR shall not be liable for any loss or damage to the CARGO or the submerged barge.

9. OWNER agrees to pay SALVOR for his time and materials used during the CARGO recovery operation. SALVOR'S materials shall consist of the D/B Gregory L (100SWL), or its equivalent, tug, slings, shackles, 5 divers, diving pipe, decompression chamber, labor, supervisions, fuel, subsistence, and consumables necessary to recover the CARGO. Not included in this rate are the two hopper barges required to receive the salvaged CARGO, and charges (if any) for their dockage while the CARGO recovery is ongoing. Also not included is any provision for propulsion of the hopper barges during the recovery operations or subsequent relocation.

BEST AVAILABLE COPY

10. The above identified equipment and labor will be based on a 12-hour day rate cost of $11,500.00 per working day. If, in the sole opinion of SALVOR, an election is made not to work because of his concern for his equipment or the well being of his crew due to weather/river conditions, a standby rate of $5,000.00 per day shall be incurred by the OWNER.

Once the above-mentioned equipment has reached the jobsite, a lump sum mobilization/demobilization rate of $30,000.00 shall be due and payable within five working days of OWNER'S receipt of SALVOR'S bill for same. SALVOR agrees that the OWNER retains the sole authority without limit during the course of salvage operations to require demobilization and/or remobilization of SALVOR'S equipment.

12. Once on the jobsite, SALVOR shall bill owner for each 14-day period of work/standby completed. OWNER shall respond with payment within 5 working days, thereafter.

13. In the event that SALVOR completes the successful recovery of all 158 pieces of steel slab within 25 days or less from the date of startup once on the jobsite, a lump sum $350,000.00 will be payable, less all previous payments made by OWNER during the 25-day period.

14. OWNER agrees that nothing set out in the contract is intended to or shall deprive SALVOR of its SALVOR'S lien or any other lien provided by the laws of the state of Louisiana or any other state, or of the United States, but that it is the intent of this contract to preserve all such liens to SALVOR.

15. SALVOR shall be solely responsible for payment to any and all persons employed by them in connection with the salvage of the CARGO in question and shall indemnify and hold harmless the OWNER harmless from and against any claims, actions, and/or liens which may be asserted against the CARGO in question for labor and/or materials furnished to or for the benefit of CARGO interests by any person employed by, or acting on behalf of, the SALVOR in connection with this salvage operation. Furthermore, SALVOR shall be solely responsible for the safety of the salvage operations and thus remains the sole party responsible for any personal injuries sustained by its employees and/or those sustained by any of its subcontractors or any other third parties during the course of this contract.

SALVOR undertakes and agrees to indemnify and hold OWNER harmless from any loss, damages, claims, suits, fines, and penalties which may be suffered by OWNER and/or any of its property brought by any entity, public or private, claiming pollution, leakage, discharge or spillage of any oil, grease, chemical or any substance whatsoever from the SALVOR'S or its subcontractor's vessels and equipment.

SALVOR further agrees to indemnify and hold OWNER harmless from any loss, damages, claims, and/or suits brought by any entity relating to damages claimed to other vessels, structures, or other equipment or properties arising from the salvage operations in question.

17. This agreement shall be governed by and construed in accordance with the general maritime law of the United States of America, unless inapplicable, and then by the laws of the state of Louisiana, but not including any conflicts of law rule thereof which would direct or refer to the laws of another jurisdiction.

18. If, for any reason OWNER fails to pay any or all sums due SALVOR for services/material provided and owing to SALVOR pursuant to the provisions of this contract, then the OWNER is obligated to pay, in addition to the principal amount, all attorneys' fees and costs incurred by SALVOR in collection of the principal amount pursuant to this contract.

19. All notices required by this Agreement to be given by any party shall be deemed to be properly given if made in writing (i.e. telexed, telecopied and/or hand delivered) to the parties addressed as follows:

SALVOR
AMERICAN EAGLE MARINE, INC.
2025 Destrehan Avenue
Harvey, Louisiana 70058
FAX # (504) 340-9629
ATTN: Mr. Doug Adams

OWNER/AGENT OF OWNER
ITALIAN CLAIMS AGENCY, INC.
As Agent For
Duferco S.A. of Lugano, Switzerland
530 Burnside Avenue
Inwood, New York 11696

THUS DONE in triplicate original on the day and date cited above, in the presence of the undersigned competent witnesses and me, Notary, after reading of the whole.

WITNESSES:

Dana H. DeJean

Ernest L. Schick

Sworn to and subscribed before me
this 20th day of January, 1994

T. Justin Simpson

T. JUSTIN SIMPSON, Notary Public
Parish of Jefferson, State of Louisiana
My Commission is for Life.

SALVOR, AMERICAN EAGLE MARINE, INC.:

Doug Adams

ICA ITALIAN CLAIMS AGENCY, INC.

Your ref.: SALVAGE CONTRACT
DD. JANUARY 31, 1994
Our ref.: 604/93

Mr. Thomas C. Jahncke
AMERICAN EAGLE MARINE, INC.
2025 Destrehan Avenue
Harvey, LA 70059

New York 6 July, 1994

Dear Mr. Jahncke:

With reference to the aforementioned salvage contract and in conformity to Paragraph 6, we are instructed by Dufurco, S.A., to cancel said contract of salvage as cargo has been abandoned.

Very truly yours,

Victor Bruzzone

VB/rd

cc: Hill Rivkins Loesberg O'Brien Mulroy
& Hayden - Mr. Steven Vangel

* NOTE* LETTER OF ABANDONMENT

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 1

To VAM DOUG ADAMS	From VICTOR BRUZZONE
Co. AMERICAN EAGLE	Co. ICA
Dept. PER OUR CONVERSATION	Phone # 516-239-7120
Fax # (504) 340-9629	Fax # 516-239-7720

530 Burnside Ave. Inwood, N. Y. 11696
Phone: 1. (516) 371-6006 - Fax: 1. (516) 371-6012

NOTARY PUBLIC:

_____

WITNESSES:

_____

_____

NOTARY PUBLIC:

_____

Sworn to and subscribed before me
this 31 day of JANUARY, 1994

_____

VICTOR J. BRUZZONE
Notary Public, State of New York
No. 4923720
Qualified in Westchester County
Certificate Filed in Westchester County
Commission Expires 3-14-94

OWNER, AS AGENT OF DUFERCO S.A.
ITALIAN CLAIMS AGENCY, INC.

Robin DeCuca

_____

A-9

LAW OFFICES
COURTENAY, FORSTALL, GUILBAULT, HUNTER & FONTANA, L.L.P.
(A LIMITED LIABILITY PARTNERSHIP)
730 CAMP STREET
NEW ORLEANS, LOUISIANA 70130-3702

FRANCIS A. COURTENAY, JR. *
TERRENCE C. FORSTALL *
JOHN S. HUNTER *
WAYNE J. FONTANA *
JOHN M. DAVES
DONALD J. VOLPI, JR.
DARYL J. DARCEY ††
WILLIAM J. SOMMERS, JR. ††
ROBERT P. REID*
RICHARD L. SEELMAN †
PHILIP S. BROOKS, JR.
PAUL M. BRANNON

* A PROFESSIONAL LAW CORPORATION
† ALSO ADMITTED IN ALABAMA AND ILLINOIS
†† ALSO ADMITTED IN TEXAS

TELEPHONE (504) 566-1601
FACSIMILE (504) 568-9130
EMAIL: POCOURTS@AOL.COM

CHARLES V. GUILBAULT
(1923 - 1993)

April 27, 1995

B-1

URGENT

VIA FACSIMILE 011-44171-390-9301
Underwriters at Interest
c/o HGC Syndicate #65
Attn: Mr. Peter Patient

VIA FACSIMILE 011-44171-481-1038
Lloyd's Claims Office
Attn: Mr. David Stoyles

VIA FACSIMILE 011-44171-662-2578
Commercial Union Assurance Companies
Attn: Ms. Allison Banks

VIA FACSIMILE 455-3495
Global Special Risks, Inc.
Attn: Mr. Mike Garin
(Claim No. C50925-0C001-3)

RE: Canal Barge Company
Sinking of Barges CBX-207 and CBX-214
DOL: October 16, 1993
Loss of Steel Slabs-$926,368.19
Claim of Duferco Steel, Inc.
Our File: 93-6430-1

Lady and Gentlemen:

We have just learned that American Eagle Marine, Inc. has begun removing the steel slabs from the sunken Canal Barges. American Eagle has undertaken this task without anyone's authority. However, we are of the opinion that American Eagle's actions will be deemed "salvage" and not a "find" entitling them to assert a salvage lien for their services. A "find" in maritime law differs from salvage in that in the former instance the property found has never been owned by any person. It therefore belongs to the finder. In the case at bar, the cargo taken from the bottom of the river is property subject to a salvage award if the property is in peril and American Eagle's services end in success or has contributed to such success. Conversely, if American Eagle is not successful or if the property is not in peril then no salvage award is due.

Keep in mind that the title or right of property of the owner of distressed goods on navigable waters is not lost or divested because of the mishap, although the property may become the subject of salvage services. Accordingly, underwriters are still deemed the owners of the steel slabs because they paid for them. When articles are lost at sea, the title of the owner in them remains, even if they are found floating on the surface or after being cast upon the shore. Webber Marine, Inc. v. One Large Cast Steel Stockless Anchor, 478 F. Supp. 973, 1981 A.M.C. 434 (E.D.La. 1979). Moreover, should a vessel or cargo be abandoned without hope of recovery or return, the right of property still remains in her owner. When property has sunk the owner has not been divested of title by virtue of that fact, and neither does the salvor gain title by finding it. The salvor obtains a right of possession; he does not acquire ownership or title to the salved property. It is his obligation to bring the salved property before an admiralty court where the owner will be given an opportunity to come in and claim the property. The salvor by bringing his salvage complaint and by having the recovered property arrested by the marshall, is enabled to take the necessary steps for securing his reward.

In order for American Eagle to prevail on their salvage claim, three elements must be present:

1. There must be property in peril on navigable waters;
2. The services must be voluntary; and
3. There must be success in whole or in part.

We believe that American Eagle will satisfy the second and third requirement, but may have difficulty proving the first requirement, that the property is in peril. The courts have held that the peril necessary to constitute a salvage service need not be one of imminent or absolute danger. However, the property must be in danger, either presently or reasonably to be apprehended. Ft. Myers Shell & Dredging Co. v. Barge NBC-512, 404 F. 2d 137 (5th Cir. 1968). The degree of peril, whether slight or serious, can effect the amount of the award, but not the establishment of a salvage service. Whether or not the cargo is in a condition of peril, when the services were rendered for which a salvage reward is claimed, is a question of fact to be determined from the circumstances present in each case. Absence of peril means the lack of an essential element necessary to support a claim for a salvage award, i.e. no peril, no reward.

As far as apprehension of danger is concerned, it is not essential in order to constitute a salvage service that the danger be immediate or absolute. It is sufficient that at the time the assistance is rendered, the cargo has encountered any danger or misfortune which might expose her to destruction if the service was not rendered. We, obviously, should take the position that the cargo is not subject to destruction by it being on the bottom of the river, therefore not in peril.

If we can prove that American Eagle does not account for all of the property raised from the barges, then the courts will hold that they are not entitled to a salvage award. One who plunders, steels or destroys any goods in distress, in addition to losing its salvage lien can be fined not more than $5,000 or imprisoned for not more than ten years or both. 18 U.S.C. § 1658. We must, of course, concern ourselves with American Eagle lifting the slabs and hiding them or selling them without our authority.

American Eagle may take the position that we have abandoned the property at the bottom of the river. Abandoning maritime property within the meaning of the salvage law is

BEST AVAILABLE COPY

the act of leaving or deserting such property by those who were in charge of it, without hope on their part of recovering it and without the intention of returning to it. Obviously, we have not abandoned the property even though it has been sunk for approximately two years. The courts have held that "a case of the total abandonment of a vessel upon the Mississippi River very rarely occurs, especially where ... she is stranded near the shore." Montgomery v. The T.P. Leathers, F. Cas. 9736 (D.La. 1852).

One who aids distressed property on navigable waters has the right of possession. No other person or persons, without his consent, can lawfully intrude upon that possession. As stated above, the salvor in possession has the right to bring the property within the jurisdiction of the admiralty court. He is under no obligation to accept just any sum which the vessel owner or his representative offers him. He must however, at all times, act in good faith and with complete honesty. Otherwise, he may waive his salvage lien. When the property has been brought to the surface, the salvor is not bound to surrender possession. He can retain possession of the property until payment of the salvage reward is made or security given to secure the release of the property; or the property can be retained, should payment not be made or bond given, until it is taken into custody by the admiralty court.

The successful salvor possessing as he does, a maritime lien for the salvage services rendered to the imperiled property, can enforce the lien by proceeding against the salved property by a salvage suit *in rem*. If the matter of the award has not been settled amicably, either after negotiation between the parties or by resort to arbitration, the salvor can then take such steps as will ensure that the proceeds from the sale of the property saved will provide the compensation for his services. Therefore, after American Eagle raises the steel slabs they do not have to surrender them to us until we either pay them for their services or we post security. They must first, however, convince the court that the slabs were in peril.

In summary, it can be stated that one who voluntarily and successfully saves imperiled property on navigable waters, be it damaged, derelict or wrecked, does not become the title holder of the property, but saves the property for the benefit of the owner with the expectation of receiving an appropriate salvage award.

Accordingly, in our opinion, the actions of American Eagle, while not authorized, will give rise to a claim for a salvage award. The only option for us to take, is to convince the court that the cargo was not in peril. If the court disagrees with us, than we will obviously attempt to keep the salvage award as low as possible. Keep in mind that we would have had to raise the steel slabs anyway at a significant cost to underwriters. We will need to retain other salvors in this area to bolster our contention that the salvage award that American Eagle claims (whatever that may be) is unreasonable and should not be accepted by the court.

Because the steel slabs are valued at more than what underwriters paid for them, we recommend that you authorize us to put American Eagle on notice of underwriters ownership and title to the steel slabs and that they must account to a court for whatever slabs they raise. We also recommend that you authorize us to hire a marine surveyor, one involved originally, to watch over American Eagle and keep them honest.

We need this authority very promptly because American Eagle is apparently on site at

present and has been for several days, how long we do not know yet.

With best regards, I remain

Very truly yours,

Francis A. Courtenay, Jr.

FAC/RPK/mrt

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

STEVEN HENRY ARTHUR ADAMS, ET AL	*	**CIVIL ACTION**
	*	**NO. 94-1954**
VERSUS	*	
	*	**SECTION "N" (4)**
UNIONE MEDITERRANEA DI SICURTA, ET AL.	*	

ANSWER TO SUPPLEMENTAL AND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND COMPLAINT

NOW INTO COURT, through undersigned counsel, comes American Eagle Marine, Inc. ("American Eagle"), defendant herein, and for answer to the Supplemental and Amended Complaint for Declaratory Judgment and Complaint of Steven Henry Arthur Adams, For Himself and as Representative of Certain Underwriters at Lloyd's and Certain British Insurance Companies, plaintiff herein, respectfully avers as follows:

FIRST DEFENSE

For answer to the separately numbered paragraphs of Plaintiffs' Supplemental and Amended Complaint for Declaratory Judgment and Complaint, American Eagle avers that:

C-2

A.

The allegations contained in Articles I, II, III, IV, V, VI, VIII and XIV of the Supplemental and Amended Complaint for Declaratory Judgment and Complaint do not pertain to American Eagle and therefore, require no answer, but to the extent that answer may be deemed to be required, such allegations are denied for lack of information sufficient to form a belief at to the truth thereof.

B.

The allegations of Article VII of the Supplemental and Amended Complaint for Declaratory Judgment and Complaint are admitted.

C.

The allegations of Article IX and XII of the Supplemental and Amended Complaint for Declaratory Judgment and Complaint are denied.

D.

The allegations of Article X and XIII of the Supplemental and Amended Complaint for Declaratory Judgment and Complaint are denied for lack of information sufficient to form a belief as to the truth of the matters asserted therein.

E.

In response to the allegations of Article XI of the Supplemental and Amended Complaint for Declaratory Judgment and Complaint, American Eagle admits that it received the correspondence attached as Exhibit "B" to the

Supplemental and Amended Complaint for Declaratory Judgment and Complaint, and American Eagle further avers that said correspondence is the best evidence of its own assertions. However, American Eagle has no knowledge as to the accuracy of the representations made therein and must therefore, deny the allegations of this Article for lack of information sufficient to form a belief as to the truth thereof.

F.

The allegations of Articles XV, XVI and XVII of the Supplemental and Amended Complaint for Declaratory Judgment and Complaint state conclusions of law which require no answer, but to the extent that these allegations are deemed to require answer, they are denied.

SECOND DEFENSE

American Eagle avers that it had no knowledge of any ownership interest in the steel slabs as alleged by plaintiffs and that, upon notice from Duferco, through the Italian Claims Agency, that the slabs had been abandoned, American Eagle undertook to save a portion of the cargo of steel slabs from their circumstances of peril. American Eagle was successful to some extent in raising a number of slabs but was unable to raise all slabs due to the adverse conditions presented by the Mississippi River. American Eagle therefore claimed its preferred maritime lien over the slabs recovered and assigned its rights and interests, as to those slabs, to AK Steel. AK Steel was then free to assert it acquired rights against the steel slabs, and American Eagle is not responsible for any actions undertaken by AK Steel.

WHEREFORE, American Eagle Marine, Inc. prays that this answer be deemed and sufficient and that, after due proceedings had, there be judgment herein dismissing the

original and all supplemental and amending Complaints for Declaratory Judgment and Complaints filed on behalf of plaintiffs, with all costs of these proceedings taxes to plaintiffs and for such other general and equitable relief as this Court may deem just in the premises and be competent to grant.

Respectfully submitted,

T. JUSTIN SIMPSON (#18437)
LARZELERE & PICOU, L.L.P.
Suite 1100 - Two Lakeway Center
3850 North Causeway Blvd.
Metairie, LA 70002
Attorneys for American Eagle
Marine, Inc.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 29th day of November, 1995, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States mail, properly addressed, and first class postage prepaid.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

STEVEN HENRY ARTHUR ADAMS, For Himself and as Representative of Certain Underwriters at Lloyds, Et Al	*	**CIVIL ACTION** **No. 94-1954** **Section "K", Mag. 4**
VERSUS	*	**Judge Stanwood R. Duval, Jr.**
UNIONE MEDITERRANEA DI SICURTA, ILVA S.P.A., DUFERCO S.A., ARMCO STEEL COMPANY, L.P., CANAL BARGE CO., LTD. and DUFERCO STEEL, INC.	*	

ANSWER AND DEFENSES, AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND AMENDED CROSS CLAIM

NOW INTO COURT, through undersigned counsel, comes defendant, A. K. Steel Corporation (f/k/a Armco Steel Company, L.P.) (hereinafter sometimes referred to as "A.K. Steel"), and files their Answer and Defenses to the Complaint of Plaintiffs for Declaratory Judgment as amended and A. K. Steel's Amended Complaint for Declaratory Judgment and Amended Cross Claim and allege and aver upon information and belief as follows:

ANSWER AND DEFENSES

AND NOW, A.K. Steel files its Answer and Defenses to the Complaint by plaintiffs as amended and allege and aver upon information and belief as follows:

FIRST DEFENSE

A.K. Steel readopts and re-avers each and every Answer and Defense set forth in their original Answer and Defenses, Complaint for Declaratory Judgment and Cross Claim previously filed in this matter as if copied herein.

SECOND DEFENSE

Plaintiffs waived any claim for ownership and/or title in the sunken steel slabs at issue when they rejected the abandonment of the steel by Duferco S.A. and initially declined to make payment on this claim.

THIRD DEFENSE

Following the abandonment of the steel slabs by all owners and the rejection by underwriters, American Eagle, through their salvage efforts, and, in turn, A.K. Steel obtained ownership and/or title of said steel slabs free and clear of any claims of ownership by plaintiffs or any other party.

FOURTH DEFENSE

Following the abandonment of the steel slabs by Duferco S.A. and the subsequent rejection by UMS and plaintiffs, the subrogation/settlement agreement between plaintiffs and Duferco S.A. did not confer any ownership interest or title in said steel slabs.

FIFTH DEFENSE

Plaintiffs failed to join a necessary or indispensable party.

SIXTH DEFENSE

In regards to plaintiffs' claim of ownership of said steel slabs, this Court lacks subject matter jurisdiction.

SEVENTH DEFENSE

Plaintiffs lack representative capacity to bring a claim of ownership of said steel slabs.

EIGHTH DEFENSE

A.K. Steel prays, in the alternative and in the alternative only, that should this Honorable Court deem that American Eagle and/or A.K. Steel did not obtain ownership and/or title interest in said steel slabs, free of plaintiffs' ownership claim, all of which is specifically denied, and that ownership and/or title interest remains with plaintiffs, then A.K. Steel specifically prays that American Eagle and, in turn, A.K. Steel are entitled to recover all salvage expenses and bonus mitigate and/or offset any award of damages against A.K. Steel with any and all cost and/or expense of salvage services, as well as a salvage bonus for the extensive efforts required to salvage the steel slabs.

NINTH DEFENSE

A.K. Steel specifically reserves the right to file Supplemental Defenses to plaintiffs' Complaint as amended upon completion of additional discovery.

ARTICLE ONE

Except as previously admitted in prior Answer and Defenses, A.K. Steel denies the truth of the allegations contained in Article 1 of plaintiffs' Second Supplemental and Amended Complaint.

ARTICLE TWO

The allegations contained in Article 2 of plaintiffs' Second Supplemental and Amended Complaint are admitted.

ARTICLE THREE

The allegations contained in Article 3 of plaintiffs' Second Supplemental and Amended Complaint are admitted.

ARTICLE FOUR

The allegations contained in Article Four of plaintiffs' Second Supplemental and Amended Complaint are admitted.

WHEREFORE, A. K. Steel Corporation (f/k/a Armco Steel Company, L.P.) prays that after due proceedings be had there be judgment herein in its favor and against plaintiffs and for further relief as prayed for or as equity and justice require.

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT TO QUIET TITLE

AND NOW, assuming the position of plaintiffs in their action for declaratory judgment to quiet title, A.K. Steel (f/k/a Armco Steel Company, L.P.) (hereinafter sometimes referred to as "A.K. Steel") and allege and aver upon information and belief as follows:

ARTICLE ONE

This Complaint for Declaratory Judgment is an Admiralty and Maritime claim within the meaning of 28 U.S.C. §1333 and F.R.C.P. Rule 9(h).

ARTICLE TWO

A.K. Steel readopts and re-avers each and every allegation previously set forth in its Complaint for Declaratory Judgment for Quiet Title.

ARTICLE THREE

A.K. Steel wishes to add the following paragraphs to its original Complaint for Declaratory Judgment as follows:

VII(a)

Defendant, Britamco Underwriters, Inc. (hereinafter referred to as "Britamco"), was at all times materially hereto, a foreign corporation organizing under the laws other than the State of Louisiana with its principal place of business in Fort Lauderdale, Florida and the underwriters and/or insurers of American Eagle Marine, Inc. and are responsible and/or liable under the policy of insurance for any and all acts and/or omissions and/or negligence of American Eagle Marine, Inc.

XIX

A.K. Steel prays in the alternative and in the alternative only that should this Honorable Court deem that A.K. Steel does not possess title to said steel slabs, all of which is denied, then A.K. Steel is entitled to recover all salvage expenses and bonus mitigate and/or offset any award of damages against it with any and all salvage expenses

incurred by American Eagle and/or A.K. Steel for the salvage of the said steel slabs, as well as a salvage bonus.

WHEREFORE, A. K. Steel Corporation (f/k/a Armco Steel Company, L.P.) prays that, after due proceedings be had, there be declaratory judgment in its favor awarding title to salvage steel slabs and denying any claim for ownership or title by defendants and for further relief as prayed for or as equity and justice require.

AMENDED CROSS-CLAIM

AND NOW, assuming the position of plaintiffs in cross-claim comes defendant, A. K. Steel Corporation (f/k/a Armco Steel Company, L.P.) (hereinafter sometimes referred to as "A.K. Steel") and allege and aver upon information and belief as follows:

ARTICLE ONE

A.K. Steel readopts and re-avers each and every allegation set forth in its previous cross claim.

ARTICLE TWO

A.K. Steel wishes to add the following paragraph to its original Cross Claim as follows:

I(a).

Made defendant in cross claim is Britamco Underwriters, Inc. (hereinafter referred to as "Britamco") and who at all times materially hereto and upon information and belief, is a foreign corporation with its principal place of business in Fort Lauderdale, Florida and the underwriters and/or insurers of American Eagle Marine, Inc. And are

responsible and/or acts and/or liable under the policy of insurance for any and all omissions and/or negligence of American Eagle Marine, Inc.

X.

In the event that this Court finds A.K. Steel is liable to plaintiff in the main demand, all which is specifically denied, A.K. Steel is entitled to judgment over and against Britamco in indemnity or contribution all sums which A.K. Steel may be cast in judgment, including damages sustained, attorneys' fees and litigation costs.

XIX

A.K. Steel prays in the alternative and in the alternative only that should this Honorable Court deem that A.K. Steel does not possess title to said steel slabs, all of which is denied, then A.K. Steel is entitled to recover all salvage expenses and bonus mitigate and/or offset any award of damages against it with any and all salvage expenses incurred by American Eagle and/or A.K. Steel for the salvage of the said steel slabs, as well as a salvage bonus.

WHEREFORE, A. K. Steel Corporation (f/k/a Armco Steel Company, L.P.) respectfully pray for judgment as follows:

1. In the event that A.K. Steel is cast in judgment are found liable unto plaintiffs and that there be judgment herein and in favor of A.K. Steel and against American Eagle and Britamco for all such sums as A.K. Steel is cast in judgment and require to pay.

2. There be judgment herein and in favor of A.K. Steel and against American Eagle and/or Britamco for all

damages sustained and for attorneys' fees and costs incurred by A. K. Steel in defending against the demands of plaintiffs.

3. There be judgement herein and in favor of A.K. Steel as prayed for or as equity and justice requires.

Respectfully submitted,

Paul C. Miniclier, T.A. (#17062)
The Law Office of Paul C. Miniclier
330 Camp Street, 2nd Floor
New Orleans, Louisiana 70130
(504) 524-3223

Attorneys for defendant,
A.K. Steel Corporation
(f/k/a Armco Steel Company, L.P.)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record by placing same in the United States mail, properly addressed and postage prepaid.

New Orleans, Louisiana, this ____ day of _____, 1997.